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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Estate of CHARLES J. RICHARDS,
Deceased.

MICHAEL DOBROV,
Petitioner and Respondent,
KENT R. GUTHRIE,
Executor and Respondent,

v.

LAURA WOODWARD,
Objector, Petitioner, and Appellant.

A150325

(City & County of San Francisco
Super. Ct. No. PES14-297788)

Appellant Laura Woodward seeks to challenge two orders entered by the probate court in the estate of Charles J. Richard. The first order was for the final distribution of assets. The second order apportioned an award of attorneys' fees equally between Woodward and Respondent Michael Dobrov and awarded limited fees to Woodward for extraordinary services. We will not consider Woodward's challenge to the order for final distribution because she did not specify the order in any notice of appeal. She fails to present any ground for reversal or modification of the apportionment fees or the award of extraordinary fees. We affirm the fee order.

I. Background

Charles J. Richards died on April 10, 2014. His will named Kent Guthrie as his executor. Woodward, the attorney who had prepared the will, agreed to act as Guthrie's attorney.

Woodward and Guthrie worked to locate and unwind Richards' assets, which included a home and various securities. The home was encumbered by a reverse mortgage, and the estate's assets were used to pay it in full. Woodward assisted Guthrie in securing a reconveyance of the deed of trust from the Department of Housing and Urban Development (HUD).

Woodward and Guthrie disagree on which of them performed the bulk of the work to pay off the reverse mortgage and secure the reconveyance. Guthrie insists he did, while Woodward claims she spent more than "20 hours obtaining copies of the reverse mortgage agreement and related materials, researching, reviewing and telephoning, writing and otherwise attempting to obtain assurances of and reconveyances by Wells Fargo Bank and HUD after payoff of Decedent's Reverse Mortgage, ultimately obtaining said reconveyances many months later."

A similar dispute exists concerning securities belonging to Richards' estate. Guthrie claims he found a Transocean stock certificate while going through the decedent's papers and passed it on to Wells Fargo and Woodward. After neither Wells Fargo nor Woodward could trace the Transocean stock, Guthrie, through his personal investment advisor, eventually learned it was worthless. Guthrie also asserts he first learned that Richards owned more shares of Schlumberger stock than he thought when the estate kept receiving dividends after he sold 400 shares. Puzzled by the continuing stream of dividends, Guthrie made inquiries and learned Richards owned an additional 400 shares due to a stock split.

Woodward also claims she worked on tracing the Transocean stock and discovering the additional Schlumberger shares. Woodward explained that she spent over ten hours researching the securities. Woodward said Transocean stock certificates should have been converted to stock in Transocean's successor corporation, but she was

terminated before she could complete the conversion. She further asserts that she was the person who first learned the Schlumberger stock had split.

Woodward filed an initial final account and report of the executor and petition for settlement in June 2015. Two months later, the probate examiner issued its examination of the initial final account and report of the executor and petition for settlement, which listed several discrepancies, including the failure to deposit Schlumberger dividends and to determine whether the Transocean stock was an asset of the estate.

A month later, after Woodward's and Guthrie's relationship soured, Dobrov substituted in as counsel for Guthrie. Woodward had accused Guthrie of breaching his fiduciary duty by purchasing stock with assets that Guthrie had prematurely liquidated in preparation for distribution of the estate. That reinvestment resulted in loss to the estate, but the beneficiaries elected not to pursue Guthrie for the loss.

Dobrov filed an amended first and final account and petition for settlement that addressed the probate examiner's concerns. A month later, Dobrov filed a second amended first and final account and report of the executor and petition for settlement.

Finally, Dobrov filed a third amended first and final account at the court's request to address additional issues identified by the probate examiner. On August 11, 2016, the probate court issued its order of final distribution and settling of the third amended first and final account. The court reserved a ruling on executor's and attorney's fees, ratified, confirmed, and approved the acts and transactions of the executor and accepted the third amended first and final account.

Dobrov and Woodward sought awards of attorney's fees. Dobrov claimed 76.9 hours of ordinary services. Woodward claimed 85.5 hours of ordinary services and 65.5 hours of extraordinary services. She explained that the extraordinary services included more than 20 hours spent on the decedent's reverse mortgage and the HUD reconveyance, 14 hours reviewing estate account inaccuracies, 10 hours researching Schlumberger and Transocean stock, and over 20 hours on Guthrie's stock investments while the estate was pending. Her hourly fee was \$420, so she requested \$27,510 for her services.

After reviewing Dobrov's and Woodward's submissions, the probate court split the attorneys' fees evenly between Dobrov and Woodward. It also awarded Woodward \$3,399 for extraordinary services in connection with the reverse mortgage and HUD reconveyance. Otherwise, the court disallowed Woodward's extraordinary fees because her request included "time spent on ordinary services, [such as] time spent on basic research, and services not benefitting the estate." Woodward timely appealed the fee order.

II. Discussion

A. Apportionment of statutory fees was proper.

An attorney for the personal representative of a decedent's estate "shall receive compensation" for "ordinary services" provided to the personal representative "based on the value of the estate" and calculated pursuant to a statutory formula. (Prob. Code § 10810; see *Estate of Wong* (2012) 207 Cal.App.4th 366, 375.) When a personal representative has more than one counsel, Probate Code section 10814 governs the apportionment of compensation among multiple attorneys: "When there are two or more attorneys for the personal representative, the attorney's compensation shall be apportioned among the attorneys by the court according to the services actually rendered by each attorney or as agreed to by the attorneys." (*Estate of Wong, supra*, at pp. 375-376.) The probate court has discretion to apportion the statutory attorney fees for ordinary services. (*In re Estate of McManus* (1963) 214 Cal.App.2d 390, 400.) We review the manner of that apportionment for an abuse of discretion. (*Ibid.*)

The court did not abuse its discretion when it equally apportioned the ordinary attorneys' fees between Woodward and Dobrov. Woodward's work valuing the Transocean stock and uncovering additional Schlumberger shares were ordinary duties involved in locating and selling property belonging to the estate. (*In re Parker's Estate*, (1921) 186 Cal. 668, 670.)

The division of labor also appears to have been roughly equal. Woodward filed the initial final account, and Dobrov filed the three amendments requested by the court, thus demonstrating that considerable work was required to distribute and close the estate

after Woodward was no longer representing Guthrie. Although Woodward claimed approximately 100 hours in ordinary services and Dobrov claimed approximately 77, Guthrie's declaration disputed many of the hours claimed by Woodward. We see no reason on this record to conclude the superior court abused its discretion when it apportioned attorneys fees equally between Woodward and Dobrov.

B. Failure to award additional extraordinary fees was not an abuse of discretion.

In addition to ordinary fees for unwinding an estate, attorneys may be entitled to compensation for "extraordinary services," or services not involved in the typical probate case. (*Estate of Hilton* (1996) 44 Cal.App.4th 890, 894-895; Prob. Code, § 10811.) The grant or denial of such fees is within the sound discretion of the probate court. (Prob. Code, § 10811, subd. (a); *Estate of Trynin* (1989) 49 Cal.3d 868, 873-874.) Woodward claims the probate court wrongly declined to award her the full measure of extraordinary fees due for her efforts. We also review the probate court's order for an abuse of discretion. (*Estate of Downing* (1982) 134 Cal.App.3d 256, 266.)

In determining amount of extraordinary fees to award an attorney, the probate court should consider the value of statutory services and the size of the estate. (*Estate of Hilton, supra* 44 Cal.App.4th at 918.) "If, under all the relevant circumstances, the amount awarded as ordinary compensation is fair and reasonable for all the attorney services, the court may disallow a request for extraordinary compensation even though some extraordinary services have been performed." (*Estate of Trynin, supra*, 49 Cal.3d at p. 874.)

Woodward claims she is entitled to extraordinary fees for 65.5 hours spent on paying off the reverse mortgage, obtaining a reconveyance of the deed of trust, reviewing estate account inaccuracies, researching Schlumberger and Transocean stock, and attempting to address Guthrie's ill-fated stock investments. Based upon her regular hourly fee of \$420, she requested \$27,510 for these services. Again, Guthrie disputed the amount of time Woodward claimed she was required to spend on these issues and the necessity of her services. The probate court awarded her \$3,399 for work she performed in connection with the payoff of the reverse mortgage and reconveyance of the deed of

trust. In reaching this decision, the probate court explained that Woodward’s “alleged extraordinary services included time spent on ordinary services, time spent on basic research, and services not benefitting the estate.”

We agree with the probate court that most of the services Woodward specified are ordinary rather than extraordinary services.¹ The court compensated her for the only tasks that arguably qualify for extraordinary fees: the reverse mortgage and reconveyance of deed of trust. There was no abuse of discretion.

C. Failure to Scrutinize Account & Executor’s Actions

Finally, we will not address Woodward’s claims that the probate court violated its affirmative duty to resolve issues with the estate’s account and Guthrie’s alleged breach of fiduciary duty. These claims challenge the court’s order of final distribution and settling of the third amended first and final account, filed August 16, 2016.

“ “[A]ppeals [that] may be taken from orders in probate proceedings are set forth in . . . the Probate Code, and its provisions are exclusive.” ’ ” *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 754, citing *Estate of Stoddard* (2004) 115 Cal.App.4th 1118, 1125-1126.) Probate Code section 1300, subdivision (b) permits appeals of an order “[s]ettling an account of a fiduciary.” If appealable orders listed in the Probate Code are not timely challenged, “they become final and binding.” (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1450 fn. 5, citing *Estate of Lindauer* (1942) 53 Cal.App.2d 160, 165-166.)

¹ California Rules of Court, rule 7.703 (c) provides an illustrative list of services which may merit extraordinary compensation, such as “(1) Legal services in connection with the sale of property held in the estate; [¶] (2) Services to secure a loan to pay estate debts; [¶] (3) Litigation undertaken to benefit the estate or to protect its interests; [¶] (4) Defense of the personal representative’s account; [¶] (5) Defense of a will contested after its admission to probate; [¶] (6) Successful defense of a will contested before its admission to probate; [¶] (7) Successful defense of a personal representative in a removal proceeding; [¶] (8) Extraordinary efforts to locate estate assets; [¶] (9) Litigation in support of attorney’s request for extraordinary compensation, where prior compensation awards are not adequate compensation under all the circumstances; [¶] (10) Coordination of ancillary administration; and [¶] (11) Accounting for a deceased, incapacitated, or absconded personal representative under Probate Code section 10953.”

Woodward’s notice of appeal specifies that her appeal is taken from the order apportioning statutory fees and granting a portion of extraordinary fees, filed November 10, 2016. The notice does not specify the order for final distribution. “ ‘ “ [W]here several judgments and/or orders occurring close in time are separately appealable (e.g., judgment and order awarding attorney fees), each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal.” ’ [Citations.] The policy of liberally construing a notice of appeal in favor of its sufficiency (Cal. Rules of Court, rule 8.100(a)(2)) does not apply if the notice is so specific it cannot be read as reaching a judgment or order not mentioned at all. [Citations.]” (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 173.) Woodward failed to timely appeal the August 16 order. We have no jurisdiction to consider it.

Moreover, we have concerns that in challenging settlement of the estate and alleging Guthrie breached his fiduciary duties, Woodward is taking a position in litigation that is adverse to her former client. The record is devoid of any informed consent provided by Guthrie to allow such conduct. (See, Rules of Prof. Conduct, rule 1.9.)

III. Disposition

The order apportioning statutory fees and granting a portion of extraordinary fees is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Petrou, J.